



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Date: July 6, 2021

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Release Number: **202139011**

Release Date: 10/1/2021

Ull Number 501 03-00, 501 03-30

Dear _____ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Notice 437, Notice of Intention to Disclose, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures
Notice 437
Redacted Letter 4034
Redacted Letter 4038



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: May 20, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B – State

C = Date

M – Activity

N = Activity participants

UIL:

501.03-00

501.03-30

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You submitted Form 1023-EZ, Streamlined Application for Recognition of Exemption Under IRC Section 501(c)(3). You were incorporated in the state of B on C. You indicated on Form 1023-EZ that your mission is to spread knowledge of M across the state of B, to be a positive force in serving your community, and to provide a place for N to gather and exchange ideas in a safe and welcoming environment.

We subsequently requested additional information about your specific activities, as well as a copy of your Articles of Incorporation. Your purposes as stated in your Articles of Incorporation declare that your core mission is to spread knowledge of M across the state of B, be a positive force in serving your community, and provide a diverse forum where those engaged in the practice and those desiring to learn more can come together and exchange ideas in a safe and welcoming environment. Your Articles of Incorporation make no specific provisions for your remaining assets in the event of the dissolution of your corporation.

Information that you provided in response to our request shows that you conduct recreational and social activities that include networking events, safety education events, fundraising at local bars or other organizations, and participating in pride events. Your events are directed to LGBTQ individuals over the age of

18. You indicated that 80 percent of your time is spent on social activities, 10 percent on meetings, and the remaining 10 percent on member welcoming and discussions.

You conduct monthly business meetings to discuss events, finances, membership, and operational concerns. You conduct monthly educational events to present the different aspects of M, as well as events to exchange ideas with similar regional organizations. You also conduct charitable events which provide an opportunity to raise funds for other community nonprofit organizations, especially those focused on LGBTQ issues. These events are open to the public, however predominately all of your other recreational and social activities are limited to your members. The majority of your income is derived from membership dues.

Law

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for charitable, educational, or other enumerated purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3) 1(a)(1) provides that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it does not qualify for exemption.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3) of the Code.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) defines the term educational as the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 66-179, 1966-1 C.B. 139, describes situations under which garden clubs may qualify for exemption under Section 501 of the Code. Situation 1 describes an organization that is incorporated as a nonprofit organization to instruct the public on horticultural subjects and stimulating interest in the beautification of the geographic area. In furtherance of these purposes, the organization (1) maintains and operates a free library of materials on horticulture and allied subjects; (2) instructs the public on correct gardening procedures and conservation of trees and plants by means of radio, television, and lecture programs; (3) holds public flower shows of a noncommercial nature at which new varieties of plants and flowers are exhibited; (4) makes awards to children for achievements in gardening; (5) encourages roadside beautification and civic planting; and (6) makes awards for civic achievement in conservation and horticulture. Situation 2 describes an organization with the same facts as described in Situation 1 except that a substantial part of the organization's activities, but not its primary activity, consists of social functions for the benefit, pleasure, and recreation of its members. The organization in Situation 1 is organized and operated exclusively for charitable and educational purposes and qualifies for exemption under Section 501(c)(3) of the Code. The facts in Situation 2 are distinguishable from those in Situation 1 in that the organization in Situation 2 conducts substantial social functions not in furtherance of any of the purposes specified in Section 501(c)(3). Accordingly, the organization does not qualify for exemption under Section 501(c)(3).

Revenue Ruling 77-366, 1977-2 C.B. 192, states that a nonprofit organization that arranges and conducts wintertime ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under Section 501(c)(3) of the Code.

Revenue Ruling 78-305, 1978-2 C.B. 172, states that a nonprofit organization formed to educate the public about homosexuality in order to foster an understanding and tolerance of homosexuals and their problems qualifies for exemption under Section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of statutorily exempt purposes.

In First Libertarian Church v. Commissioner of Internal Revenue, 74 T.C. 396 (1980), the Court stated that the church failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its purpose to further the doctrine of ethical egoism. As the church operated for social and political purposes to more than an insubstantial degree, it fails to qualify for exemption under Section 501(c)(3) of the Code. The court stated that an organization will not qualify for exemption if a nonexempt activity is more than an insubstantial part of its overall activities or if an activity has more than an insubstantial non exempt purpose. The court explained that "clearly the regulations and cases contemplate that a single activity may be carried on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under Section 501(c)(3) will be denied."

In Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), it was held that if an activity serves a substantial non-exempt purpose, the organization does not qualify for exemption even if the activity also furthers an exempt purpose.

In St. Louis Science Fiction Limited v. Commissioner, 49 TCM 1126, 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under Section 501(c)(3) of the Code. Although many of the organization's functions at its annual conventions (the organization's principal activity) were educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests

Your Articles of Incorporation do not include language that limits your purposes to one or more exempt purposes. The purposes for which you were created are broader than the purposes specified in IRC Section 501(c)(3). Accordingly, you do not satisfy the organizational test required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(1)(iv), and you are not organized exclusively for purposes described in Section 501(c)(3). Additionally, your Articles are silent regarding the disposition of your assets upon your dissolution, which also precludes exemption as described in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You are also not described in IRC Section 501(c)(3) because you fail the operational test. Specifically, you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The facts show you are not operated exclusively for charitable and educational purposes, but for the purpose of popularizing M across the state of B. These activities show more than an insubstantial part of your activities are furthering recreational and social purposes.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination. You did not provide evidence that you limit your activities to the poor and distressed or the underprivileged.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" as used in IRC Section 501(c)(3) relates to the instruction of the public on subjects useful to the individual and beneficial to the community. While you promote safety education, there is no evidence you were formed and are operated exclusively for educational purposes.

Unlike the organization mentioned in Rev. Rul. 78-305, your activities are not exclusively educational. Your activities are predominantly social with incidental educational activities. Accordingly, you do not qualify for exemption under IRC Section 501(c)(3).

Although an organization may carry on activities that further one or more tax-exempt purposes, it will not be treated as operated exclusively for an exempt purpose if it has a single non-exempt purpose that is substantial in nature. See St. Louis Science Fiction Limited v. Commissioner, Better Business Bureau v. United

States, and Schoger Foundation v. Commissioner. Furthermore, social and recreational purposes which are more than insubstantial will defeat exemption under IRC Section 501(c)(3). See First Libertarian Church v. Commissioner of Internal Revenue, in which a church that operated for social and political purposes to more than an insubstantial degree failed to qualify for exemption under Section 501(c)(3). You are similar to the organization described in Rev. Rul. 77-366 (winter cruise with religious and educational purposes, but also extensive social and recreational activities), and thus not exempt under Section 501(c)(3). You are also like the organization described in Situation 2 of Rev. Rul. 66-179, in which a garden club conducting substantial social functions did not qualify for exemption under Section 501(c)(3). As stated above, while you do conduct some activities and serve some purposes that may qualify as educational under Section 501(c)(3), the fact remains that 80 percent of your time is spent on social activities.

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3). You are not organized and operated exclusively for exempt purposes as set forth in Section 501(c)(3). You do not meet the organizational test because your organizing document does not limit your purpose or dedicate remaining assets upon dissolution to one or more exempt purposes described in IRC Section 501(c)(3). You also do not meet the operational test for IRC Section 501(c)(3) because you are operated for the substantial nonexempt purpose of providing members with an opportunity to pursue social and recreational activities. Your operations are not exclusively charitable or educational and resemble those of a social club.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request

or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements